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Police Commission Handbook

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MANUAL FOR MONTANA POLICE COMMISSIONERS

FIRST EDITION 1979

Prepared by Judge
E. Gardner Brownlee

for

Montana Board of Crime Control

78-14976

Acknowledgement

and

Dedication

This manual would never have become a reality without certain persons believing it was necessary and without the hard work they did in getting it accomplished. Their efforts in getting the need reduced to a reality are certainly appreciated as are the hours they spent helping in preparation of the manual.

To them this manual is dedicated.

They are:

BARBARA EVANS, former Missoula Police Commissioner and present Missoula County Commissioner.

RAY THRAILKILL, Mayor of the City of Hamilton and Chairman of the Region 1 Advisory Council of the Montana Board of Crime Control

E. C. "DUKE" WILLEY, Field Representive for Region 1 Advisory Council of the Montana Board of Crime Control.

Judge E. Gardner Brownlee

MANUAL FOR POLICE COMMISSIONERS

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INTRODUCTION

The Police Commission has been established by Montana law to give the Mayor a tribunal to assist him in making many important decisions concerning the operation of the Police Department.

One of the most important functions of the Police Commission is to provide a Quasi-Judicial body independent of the police department where a citizen's complaint against a member of the police department will receive a fair and impartial hearing. The Montana Supreme Court has described the Police Commission as a "Quasi-Judicial Body." This is because the commission is not obligated by all of the statutory and consititutional rules governing courts, but it is still much like a court because it has many of the powers of Judges and Courts. This manual will explain most of those powers.

This manual should acquaint the Police Commissioners with the duties of the office and will recommend procedures for the conduct of the Police Commission business. Constitutional provisions, statutory provisions, and various interpretations by the Supreme Court of those laws as they affect Police Commissions are set forth in this manual and are the basis for the guidelines contained and the procedures recommended.

PART I

THE POLICE COMMISSION

PURPOSE.

The establishment of the Police Commission was ordered by the legislature to assist the Mayor with certain matters relating to the Police Department. By state law the Police Commission is very limited in its powers and duties. It is not authorized to run the Police Department or even suggest policies to be followed by that department. Neither is the Police Commission a branch of the Police Department nor subject in any way to the control of the Police Department. Some parts of the Montana Code refer to the power of the "Mayor or Commission" over the Police Department, but, the word commission in those provisions does not refer to the Police Commission but rather to the chief executive in the commission-manager form of municipal government.

The Police Commission is limited by state law to four areas of authority and to very specific duties in each of those areas, they are:

1. To examine all police department applicants.
2. To serve as an examining board to determine the eligibility of an officer for disability retirement.
3. To serve as an appeal board for an officer who is dissatisfied with the disciplinary action taken by the chief of police & Mayor.
4. To hear, try, and decide all charges brought against a police officer.

While serving as a board to try charges against a police officer the purpose served by the Police Commission is much like that of a Court and Jury. However, the main purpose of the law establishing the Police Commission is to make certain that there is an independent and impartial tribunal where an ordinary citizen can have a complaint against the conduct of a police officer fairly and fully heard on the merits and a fair decision reached.

In connection with the purpose of the Police Commission it must be said that the proper performance of the duties enhances the respect the public has for the police officers and our system of justice, it also removes any suspician that the police protect each other from any outside complaints.

By city ordinance the city council could give the members of the Police Commission additional duties so long as those duties do not conflict with the state law and so long as those duties preserve the fact of and the implication of complete independence from the control of the police department. One such additional duty could be to serve as the "Municipal Law Enforcement Board" contemplated by section 7-32-4133 which has only one duty and that is to determine whether or not an officer is entitled to continued salary by reason of occupation related injury. The legislature probably intended this to be a function of the Police Commission.

ORGANIZATION.

A Police Commission is required in every city or town that has 3 or more full time law enforcement officers. It is optional in other places. (7-32-4151)

A Police Commission consists of three members. One member is to be appointed each year by the Mayor at the first regular meeting of the city council in the month of May. (7-32-4152)

Each person appointed by the Mayor to the Police Commission must be confirmed by the city council. (7-32-4151)

Each person appointed to the Police Commission must have the qualifications required by law to hold a municipal office. (7-32-4151)

Each person appointed to the Police Commission should execute an oath of office to signify the acceptance of the appointment and the taking over of the office.

The Police Commission must hold meetings as required to carry out the duties imposed by law. Each member is to receive as compensation the sum of not to exceed $10.00 per day and not to exceed $50.00 in any one month. (7-32-4152)

The Police Commission should select one member to serve as chairman to preside over all meetings and hearings. A vice-chairman should also be selected. A secretary should be selected who is responsible for the taking of the commission minutes at all meetings and hearings. The secretary should also be responsible for the keeping of the commission records

and files. All records and files should be kept at the City Hall in the office of either the City Clerk or the Mayor.

Sections 7-32-4154 and 7-32-4107 grant the Police Commissioners power to make rules governing proceedings before the Police Commission. Most of the matters contained in this manual are mandatory by State Law, however, there are a few matters, such as the notice to any person who wishes to present a claim against a peace officer, that could properly be part of the rules adopted by the Police Commission. To make such items part of the "rules" for the Police Commission it is recommended that each Police Commission adopt this entire manual as part of the rules governing the operation of the Police Commission.

PART II

DUTY TO EXAMINE APPLICANTS FOR POLICE DEPARTMENT VACANCIES

One of the four duties the state law gives to the Police Commission is the examination of all applicants for vacancies that exist on the Police Department. (7-32-4154)

The Montana Codes also set out rules governing that examination, they are:

1. The Police Commission can examine an applicant only if the mayor sends the application to the Police Commission. (7-32-4154 & Supreme Court Case, Horvath vs. City of Anaconda, 112 Mont. 266)

2. The Supreme Court case mentioned above also ruled that no one, not even the Police Commission, can compel the mayor to forward an application to the Police Commission. The mayor has the right to screen the applicants and reject those he feels unqualified.

3. Pursuant to 7-32-5154 the examination of applicants must be "as to their age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force." Except for a few matters mentioned below the Montana Statutes do not specify how the examination should be conducted or when an applicant should be considered suitable. Those matters are for the Police Commission to decide. Another sentence in the above quoted section does give the Police Commission, subject to the approval of the mayor, power to make rules governing the examinations. Some requirements for all applicants set forth in other Montana Code sections are:

   (a) age, as set out in 7-32-4112
   (b) must be a citizen, (7-32-4112)
   (c) must meet the minimum qualifying standards promulgated by the board of crime control. (7-32-303 &7-32-4112)
   Note. These rules can be obtained from the board of crime control. They are also available in most police departments.
   (d) residency requirements (7-32-301 & 302)
   (e) special rule for retired officers who wish to return. (7-32-4110)
   Note. All these sections are quoted in full in part VII of this manual.

4. Every applicant deemed qualified by the Police Commission must be issued a certificate to that effect. (A sample certificate form is included in Part VI of this Manual.)

In addition to the requirements of the state law for police applicants, many city ordinances impose other requirements and these must be followed by the Police Commission. The city ordinance cannot change the state law, but the ordinance can expand on the state law and cover matters not included in the state law. Residence in a city is one matter that may be covered by city ordinance.

The big question is: How should an examination be conducted? Because of constitutional and federal requirements it is necessary that the applicant be invited to be present. It also seems necessary that the Commission discuss with the applicant any information they obtain from an outside source. This is because the only safe course to follow is to make a decision based on information received at the interview or with knowledge of the applicant. There is not any appeal to any higher authority from the Police Commission decision but certain civil rights laws dictate caution.

Because an officer can be discharged for false statements made to the Commission (7-32-4111) some Police Commissions record the interview. Others require many written answers either on the application or in the form of a written test. However, it is not a requirement of the law that the interview be recorded.

A complete physical examination is necessary because the physical condition of a police officer is very important.

An F.B.I. fingerprint check will furnish some information about the applicant's background. A juvenile court record could be obtained with the permission of the applicant and the approval of a District Judge.

Persons given as references should be questioned without the applicant being present but this should be done with the express permission of the applicant.

Polygraph tests have been used in some locations and are helpful if given by a qualified examiner. The use of such tests has been held to be perfectly proper.

In many areas there are agencies that administer tests of many kinds. Some can determine a person's general intelligence and others can test for emotional stability. Each Police Commission should look into what is available and decide which, if any, they want to use. These tests can be helpful when only a few of many applicants are to be qualified and certified. Section 7-32-4106 imposes a limit on the number of applicants that can be approved and placed on a list of persons suitable for appointment by the Mayor.

THE SELECTION PROCESS

The following guidelines have been approved by the Attorney General, the Human Rights Division, the Department of Labor and Industry and by the POST Advisory Council.

" Because of federal and state laws prohibiting certain kinds of employment discrimination, the POST Advisory Council warns all agencies to use extreme care in rejecting any applicant. Whenever an applicant is rejected, the law enforcement agency must have valid grounds for the rejection.

All law enforcement agencies should establish procedures designed to select only those applicants who possess the necessary physical, mental, and emotional characteristics demanded by the profession. To assist agencies in making this determination and to aid the POST Advisory Council in evaluating an applicant's qualifications for subsequent certification, the following process should be followed:

1.) Where practical, a preliminary interview should be conducted to screen applicants who do not meet the minimum qualifications.

2.) Applicants should be given an application form which includes a detailed personal history questionnaire to be completed and returned. A naturalized citizen should submit a copy of his naturalization papers with the application. When returned, the form should be reviewed to screen applicants who do not meet the minimum qualifications.

3.) Applicants should be fingerprinted and a search made of local, state and national fingerprint files. Copies of the record checks should be retained in the applicant's personnel file so they may be available for examination at any reasonable time by representatives of the Council. Applicants who do not meet the minimum qualifications should immediately be rejected.

4.) The applicant should be scheduled for a written examination. The examinations should be approved by the POST Advisory Council, should be fully standardized and validated, and should measure the applicant's intelligence sufficiently to indicate whether he can effectively deal with the complex situations arising in law enforcement and can derive the maximum benefit from the training process. See Appendix A. Applicants who do not pass the examination should be rejected.

5.) The POST Council recommends the use of a personality or psychological test, to be used only for the purpose of pointing out probable personality problems to be investigated further. The Council highly recommends the use of a polygraph. The polygraph operator may use the results of personality tests as a guide in probing personality problem areas. The results of psychological testing should not be used to screen applicants, because, as yet, researchers at the national level have not developed a validated test that complies with nondiscrimination laws. See Appendix B.

6.) A thorough background investigation should be conducted using the personal history questionnaire as the basis of the investigation. The investigator should interview the applicant's associates to determine if conditions indicated by any psychological or personality tests have ever been exhibited by the applicant. The applicant's driving record should be checked. The POST Council recommends POST Form 3-73 (Background Investigation) or a comparable form for use while conducting the background investigation. Applicants who are found to be unfit to serve as law enforcement officers should be rejected. If conducted properly, the background investigation should eliminate more applicants than any other step of this process. Care should be taken that the thoroughness of the background investigation not be influenced by any unlawful discriminatory factor; for example, the degree of scrutiny given to an applicant's background should be independent of his race.

7.) All applicants who have successfully completed the process to this point should be interviewed. This should be accomplished by a board. If the agency is small and is unable to form an oral interview board, the agency head should conduct the interview. The applicant should be rated and scored on the basis of identifiable characteristics by using an interview form. The oral interview is an excellent opportunity to observe the applicant's ability to communicate orally. To assist in the interview process, the POST Advisory Council has an oral interview form available. POST Form 7-73).

8.) A total score for each applicant should be computed from the scores obtained from examinations which have scoring results. The applicant with the highest total score should be considered first when a vacancy occurs in the agency. All offers of employment at this point must be conditional on the results of a medical examination and physical fitness test conducted prior to the employee's entrance on duty.

9.) A medical examination must be given to those applicants who have reached this stage of the process. See Appendix C. The examination should be administered by a competent physician or surgeon, selected by the agency, utilizing a medical examination form. To assist the doctor, the applicant should complete a health questionnaire form and present it to the doctor before the examination. To assist agencies in gathering this information, POST has developed a medical examination Form 4-73 and a health questionnaire Form 2-73.

Medically relevant information derived from other assessment techniques such as background investigation should be integrated with the results of the medical examination to produce the most informed medical decision. Applicants who are found to be medically unfit to serve as law enforcement officers should be rejected.

Each agency should have a written policy outlining the steps an applicant may take in appealing a medically-based rejection, and an applicant should be notified of this policy.

10.) All agencies are urged to utilize physical fitness tests comprised of exercises of agility, strength, speed and endurance. Applicants who fail to achieve a combined score of the four exercises which places the applicant in the 69th or higher percentile of the population to which the test has been administered should be rejected. The score achieved in the physical fitness test should be multiplied by the score achieved in the height-weight chart. Applicants who fail to achieve a minimum composite score of 150 should be rejected. Complete descriptions of the physical tests and scoring methods are contained in Appendices D & E.

QUALIFICATIONS

Under section 44-4-301, MCA, the Montana Board of Crime Control has established "minimum qualifying standards for employment of peace officers whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions." These minimum qualifications, found at ARM 23-3.14(10)-S14030, (2), require that a "sworn" law enforcement officer ... who is responsible for the prevention and detection of crime, and the enforcement of the penal, traffic and game laws of this state, and who has been granted general arrest powers to enforce such laws:"

"(a) Be a citizen of the United States.

(b) Be at least 20 years of age.

(c) Be fingerprinted and a search made of the local, state and national fingerprint files to disclose any criminal record.

(d) Not have been convicted of a crime for which he could have been imprisoned in a federal penitentiary or state prison.

(e) Be of good moral character as determined by a thorough background investigation.

(f) Be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement as determined by criteria established by the Board of Crime Control.

(g) Be examined by a licensed physician or surgeon and meet the physical requirements as established by the Board of Crime Control.

(h) Successfully pass an oral interview examination by the hiring law enforcement agency.

(i) Possess a valid Montana Driver's License."

All applicants must meet these minimum requirements except that the POST Advisory Council recommends:

(1) An applicant who is 18 or 19 years of age, and who is determined through this selection process to be otherwise qualified to serve as a sworn law enforcement officer may be hired, placed on training status and assigned these duties only:

(a) Directing crowd and traffic control in emergency situations.

(b) Securing an area such as a crime scene.

(c) General office duties such as records, identification, and communication.

(d) Any other duties not requiring general arrest powers.

(2) An out-of-state applicant who possesses a driver's license from his or her state of residence may be hired if, upon employment, he or she acquires a valid Montana drivers license.

In addition to the minimum requirements listed above, the POST Advisory Council recommends that an applicant should not have a lengthy traffic record and should not have been convicted of driving while under the influence of alcohol or drugs within the past five years."

PART III

OFFICER DISABILITY RETIREMENT DUTIES

The Police Commission can be asked to consider the question of whether or not an officer is disabled to the point where his service should be terminated. This request can come to the Police Commission in three ways:

1. By a request from the Officer. (7-32-4135)
2. By a request from the Mayor. (7-32-4135)
3. By charges filed against the Officer. (7-32-4155)

When a request is filed by either the officer or the chief executive of a city, the Police Commission handles the matter pursuant to the power given them by section 19-10-402. Such a request could be determined on the basis of documentary evidence presented with the request. Such evidence could consist of medical reports and reports from the chief of police. However, if the Police Commission has any questions regarding the application for disability retirement an informal hearing should be scheduled to allow all parties to explain the reports or offer additional information.

When a request is not made by the officer involved, due process of law requires that the officer be given every opportunity to respond to the allegations of disability.

When the disability question arises by virtue of charges being filed, the procedure to be followed is as set out in Part V of this manual.

Whenever a disability retirement question is presented to the Police Commission, they should consider the question of whether or not the officer could be assigned to light duty or transferred to another agency of the municipality. All as required by sections 7-32-4134, 4135 and 4136.

PART IV

DUTY TO SERVE AS AN APPEAL BOARD FOR OFFICERS

The last sentence of section 7-32-4163 of the Montana Codes states one duty of the Police Commission. That sentence reads:

> "Any officer suspended, with or without pay, is entitled to appeal such suspension to the Police Commission."

The jurisdiction of the Police Commission, or to put it another way, the right of the Police Commission to hear a complaint by an officer regarding any order made by the Mayor or Chief of Police is very limited. The only "order" the Police Commission can consider on an appeal is one of temporary suspension of the officer either with or without pay.

An officer making an appeal to the Police Commission should be required to set forth, in writing, his reasons for making the appeal. The Police Commission should then examine the written appeal request to see if the facts stated indicate there may be an abuse of discretion on the part of the Mayor or Chief of Police. If the appeal request does not so indicate, the appeal should be dismissed for that reason. If there appears reasonable cause to believe that the Mayor, or the Chief of Police has abused his discretion the matter should be set for hearing. The Mayor and the Chief of Police should each be served with a copy of the written appeal. The Police Commission should not reverse the decision of the Mayor or Chief of Police unless it satisfactorily appears that discretion was abused in ordering the suspension.

PART V

HEARING OF CHARGES AGAINST A POLICE OFFICER

> "In the determination of a lawsuit, an honest effort to adjust the relative rights of the parties should govern, to the exclusion of mere technicalities."

That quotation contained in the case of State ex. rel. Dwyer vs. Duncan, 49 Mont 54 seems to be the best advice to a Police Commission about to hear charges against an officer. Officers can be charged with conduct that, although not criminal conduct, may be improper either under the circumstances or because of the trust imposed in all police officers. Charged with this responsibility the Police Commission may well be administering a truer brand of justice than the courts.

Section 7-32-4155 says the Police Commission should hear a charge "according to the rules of evidence applicable to courts of record in the state." The District Courts are courts of record but the rules of evidence used by the District Courts are the same as those used by all courts. Those rules of evidence have as their purpose the production of a fair trial and a search for the real truth. For the most part the rules of evidence are based on common sense, but because of some constitutional provisions they do become techical in a few places. Most of those technical rules will be presented in this manual. One of the main purposes of the rules of evidence is to bring about an orderly proceeding with the presentation of only relevant matters.

An orderly proceeding requires that one person be in charge. The Police Commission consists of 3 members but the Chairman should be the one authorized or required to respond to objections to evidence and to keep the proceeding on course. Another alternative, if there is a lawyer on the commission, would be for that member to be designated as the "law member" and have him responsible for ruling on evidence questions.

One of the first things a chairman of any Police Commission will discover is that he has a lot of power. The legislature gave him the power of a District Judge in contempt matters instead of the lesser authority held by a city judge or a justice of the peace. The purpose of that power is to assure that the chairman of the police commission can keep the hearing on the subject and not let it become a shouting match.

The holding of an orderly hearing and the handling of the hearing require proper groundwork. The first step in any hearing is to have the position of each of the parties clearly defined. That is the reason section 7-32-4156 requires that charges against an officer be made in writing. The Police Commission should require that all charges against an officer be set down in such a manner as to give all the necessary information and that such information on its face show improper conduct on the part of the officer. If the written charge does not show such misconduct the Police Commission should prepare a written order of dismissal of the charges for the failure to state a valid charge against an officer.

This is because the Police Commission, like a court, is not obligated to provide a forum merely for the purpose of allowing one person to publically state his dislike for another.

Procedure for Making Charges Against a Police Officer.

A citizen with a complaint against a police officer may be afraid to go to the police station to make such a complaint. Therefore, the Police Commission should give the person the option to file such charges at the police station or at the office of the City Clerk or the Mayor. It also appears necessary that some instructions be given to the person making the charge. For this reason a form has been prepared and is recommended for use by all Police Commissions. Such a Notice is contained in Part VI of this manual. The notice also gives information regarding the manner in which the complaint will be handled by the Police Commission, and so also serves as instructions to the Police Commission.

Part VI of this manual also contains a complaint form with spaces calling for the necessary information.

Notice to the Accused Officer:

When charges are filed against a Police Officer the city employee receiving that complaint should immediately contact the Police Commission and advise them that the charges have been filed. It then becomes the duty of the Police Commission pursuant to section 7-32-4156 to serve a copy of the complaint on the officer involved at least 15 days before the time fixed for the hearing of the charge.

The statute says that a copy of the charge must be "served" on the officer. That means that some individual must deliver a copy of the complaint to the officer in person. It also means that the person making the service should execute a certificate to that effect. A form for such certificate is included in Part VI of this manual. When service is made on the officer he should also be served with a notice setting forth the time and place of the hearing as required by section 7-32-4156.

The notice of hearing should do more than merely indicate the time and place of the hearing. It should require the officer to file a written response at least 5 days before the date set for the hearing. There are many reasons: first, the officer may admit the allegations set forth in the charge in which case a hearing on the facts will not be necessary; second, he may admit the doing of certain acts complained of

and then set forth other facts that justify his conduct, in which case the required proof at the hearing will be limited to the question of justification; third, he may deny the commission of the acts charged, in which case a full hearing on the facts will be necessary to determine the true facts. The law permits the accused officer to be represented by an attorney and a written response will usually indicate whether or not an attorney will be present at the hearing.

If the written response filed by the officer shows that a hearing will be necessary, a copy of that response should be made available to the complaining party. A form for the notice of hearing is included in Part VI of this manual.

Place of Hearing.

Because it is so important to demonstrate that the Police Commission is not a part of the police department, the hearing should never be held in the police department quarters but in some other location such as the city court room or the city council chambers.

Time of Hearing.

The only Montana Code provision relating to the time of the hearing is section 7-32-4156 which provides that the accused officer must be served a copy of the charge at least 15 days before the hearing. With the permission of, or at the request of, the officer the hearing could be set at an earlier date. That permission or request should be in writing and should be made a part of the record of the proceedings.

Continuance of Hearing.

Whenever one party asks for a continuance it is within the discretion of the Police Commission to grant the request. The request should be for a valid reason and should be in writing. It is the responsibility of the Police Commission to notify all parties of any continuance.

Rights of the Accused Police Officer.

The accused officer has all the rights of any person accused of crime or wrongdoing--that includes the right to be advised of the charges, the right to meet the witnesses against him face-to-face, the right to call witnesses on his behalf, the right for time to prepare for the hearing, the right to refuse to testify without that fact being any admission of wrongdoing, the right to require that the charges against him be proven by competent evidence and to the satisfaction of the Police Commission. Section 7-32-4157 specifically gives him the right to be represented by an attorney at the hearing.

The accused officer has the right to be present at the hearing, but this does not mean that the hearing cannot be held if he is not present. All that is required is that he receive proper notice of the hearing and that he be notified of the charges and his right to appear and contest them. The hearing can proceed in his absence but the complainant will still have the burden to prove the charges to the satisfaction of the Police Commission. Under our constitution the officer is "presumed to be innocent' and every presumption of law is in favor of his innocence.

Proof Required.

In criminal actions the accused person must be proven guilty beyond a reasonable doubt. In civil actions the rule is that a claim can be established by a preponderance of the evidence, i. e. that the effect of the evidence slightly weighs in favor of the claimant.

The Montana Code provisions do not set forth the standard of proof required before the Police Commission. In one case, State ex. rel. Wentworth vs. Baker, 101 Mont 226, the Supreme Court reviewed the facts on which the Police Commission found the charges against the officer proven. In that case the Supreme Court said; "There is no substantial evidence to support the findings of the Police Commission" and therefore set aside the finding of guilty. This would indicate that the courts will require more than a slight preponderance of the evidence before the Police Commission can find the charges proven. The use of the word "substantial" indicates that the Police Commission should be pretty well satisfied that the charges are true before finding the officer guilty. If the charges amount to a violation of the Criminal law the constitution would require that the Police Commission find the charges proven beyond a reasonable doubt.

Burden of Proof.

Under our constitution the party making the complaint must prove the charges and therefore we say that party has the burden of proof. That means that if the Police Commission believes each side equally, the complaining party must lose, or, to put it another way, if neither side introduces any evidence the complaining party must lose.

The constitution prohibits the placing of any burden on the officer to disprove the charges and his failure to testify cannot be used as evidence of his guilt.

Public Trial.

Section 7-32-4158 requires that the trial be open to the public. There is one exception to the rule that no one can be excluded from the trial. Under the rules of evidence either party in a criminal type action can ask to have the witnesses excluded from the trial until they are called to testify. The Police Commission should observe this rule of evidence. This does not mean that the complaining party or the accused officer can be excluded from the hearing.

In those cases where one of the witnesses is taking an active part in the presentation of the evidence, the general rule is that the witness is exempt from the exclusion rule. This is often true in criminal cases when the prosecuting attorney wants the chief investigating officer present at all times.

Witnesses:

As in any criminal type proceeding the proof must come from witnesses who are called to testify. A witness is ordered to attend a hearing by a subpoena from the court. Section 7-32-4159 grants the Police Commission the power to issue a subpoena. The subpoena should be signed by the chairman of the Police Commission. A form of subpoena is included in Part VI of this Manual.

Either the complaining party or the accused officer has the right to ask for a witness to be subpoenaed. The Police Commission need not issue a subpoena just because the party desires one. The Police Commission can inquire into the need for the witness and the purpose to be served by the testimony to be given by the witness. This is especially true for witnesses residing away from the city. Parties often want "character witnesses" and this type of request should be carefully examined. A party may want a subpoena "in blank" and not directed to any named person. The Police Commission does not have to issue such a subpoena. Either party in the action should have the right to know the names of the witnesses subpoenaed by the other.

When a witness has certain documents that will be relevant at the hearing that witness can be compelled to bring those documents. This is done with a "subpoena duces tecum." A form is included in Part VI of this Manual.

The statute also gives the Police Commission the power to punish a person for refusal to obey a subpoena. The Police Commission is given the same power to punish as is given to a District Judge. When a person does not obey the command of a subpoena it is necessary to prepare "charges" in about the same form as a "complaint" and have the person brought before the Police Commission to explain the disobedience. If the disobedience is not explained to the satisfaction of the Police Commission the person may be punished by jail time not to exceed 5 days or a fine not to exceed $500.00 or both. A judgment must be prepared in about the same form as the "final order or decision" mentioned later in this Manual.

One word of caution. Contempt is a serious matter and the Police Commission should ask the city attorney to do the necessary paper work.

If the Police Commission has the power to punish for contempt then it follows that a witness has certain rights. A witness would have the same right to fees and mileage as does a witness called to city court. A witness could demand the fees in advance and if not paid that witness could not be held in contempt.

In Courts of law the examination of a witness is done by the question and answer process. The rules of evidence provide that an examination should be conducted in this manner. When attorneys are conducting the examination they usually

confine the examination to relevant matters. When an attorney is not present it would be best to just let the witness tell his story. Actually the narrative form of giving testimony is more natural for a person who has something to say but they often ramble and it does require the Police Commission to be careful to sift the wheat from the chaff.

Witnesses should be required to testify under Oath. Here is a sample oath that could be used:

> "Do you solemnly swear that the testimony you are about to give at this hearing is the truth, the whole truth, and nothing but the truth, so help you God?"

A witness is entitled to be treated in a civil manner when on the witness stand. The Police Commission should require proper conduct on the part of any person cross-examining the witness. Some of the technical rules of evidence that must be followed when a witness is on the stand are:

> A witness has a constitutional right to refuse to answer a question on the grounds that the answer might require self-incrimination.
>
> An accused officer does not have the right to refuse to answer a question that might incriminate him. His right is limited to a refusal to take the witness stand at all.
>
> A witness cannot be required to relate the contents of a privileged communication. Such as a conversation between husband and wife, or attorney and client, or clergyman and parishioner.

Record of the Trial Testimony.

The Montana Codes do not require that a stenographic record of the trial testimony be made. However, the Supreme Court in the case of City of Helena vs. the District Court, 166 Mont 74 urges all Police Commissions to have some form of record made of the testimony. This is because section 7-32-4164 provides for a review of the facts by the District Court and if necessary by the Supreme Court. A tape recorder could be used at the hearing or a stenographic record could be made by a court reporter.

Jury Trial.

The Supreme Court in the above cited case said that the accused officer is not entitled to a jury trial before the Police Commission and neither is he entitled to a jury trial if the case is appealed to the District Court.

Who on the Police Commission can Participate in the Final Order?

Three different situations have been ruled on by the Montana Supreme Court. A fourth situation was provided for by the 1979 legislature. They are:

1. In one case a Police Commission member was absent during part of the hearing. In that case, Miskovich vs. City of Helena, 170 Mont. 138, the Supreme Court held that the absent member could not be permitted to take part in the making of the final decision.

2. In a second case, Buchner vs. Butte, 41 Mont 377, the members of the Police Commission were appointed by the Mayor and held a hearing before they were confirmed by the City Council, in fact the City Council had refused to confirm them and the mayor then reappointed them. The Supreme Court held that as they had been appointed by the Mayor and their confirmation had not come up before the City Council they were the "De Facto Police Commission" and their acts were valid.

3. In a third case, Deware vs. City of Great Falls, (1978) 582 P2d 1171, the Police Commission members held a hearing after their term of office had expired but before the Mayor had appointed any new members. The Supreme Court held that they were in office until their successors were appointed and qualified and therefore they were still the Police Commission and their acts were valid.

4. The 1979 legislature amended section 7-32-4152 by adding the provision that a member sitting on a hearing is entitled and must continue in office until the hearing is concluded.

Answers to some legal questions that may arise.

1. Disqualification of a commissioner.

Lawyers may ask that a member of the Police Commission be disqualified from sitting on the hearing. They may claim the right to do so without giving any reason or they may claim the commissioner is personally involved in some manner and therefore disqualified to serve. The Supreme Court in the case of State ex. rel. Mueller vs. Dist. Ct. 87 Mont 108 held that there was no way a Police Commissioner could be disqualified from hearing the case and that this is true even if the Police Commissioner was a witness to the improper acts charged against the officer.

2. Double Jeopardy.

Article II, Section 25 of the Constitution provides:

> "No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction."

The application of this rule as applied to Police Commissions was explained by the Supreme Court in the case of Miskovich vs. City of Helena, 170 Mont 138 where the court said:

> "It would be a violation of the Double Jeopardy Rule for a Police Chief to suspend an officer as punishment for certain conduct and for the Police Chief to then ask the Police Commission to again punish that officer for that offense. However the Police Chief does have the power to suspend the officer pending a hearing on the charges before the Police Commission."

The double jeopardy question can also arise when an officer is convicted in the Courts of a criminal charge and then the Police Commission is asked to hold a hearing to determine if he should be dismissed from the Police force. In that situation the Supreme Court has held many times that it is not a violation of the Double Jeopardy rule to hold the hearing and even dismiss the officer from the force.

3. Application of Montana Administrative Procedure Act.

In the Miskovich case mentioned above the Supreme Court also ruled that the Montana Administrative Procedure Act does not govern proceedings before the Police Commission.

4. Identity of Informant.

In the Matter of Dewar, 169 Mont 437, the Montana Supreme Court held that the Police Commission could not order an officer to reveal the name of his informant. In that case the informant merely put the officer on the trail, and it was the information discovered by the officer that was used to convict. An informant need not be revealed unless his statements are being used as part of the "testimony" on which a conviction is asked.

5. Conflict between State and City laws.

In the case of Bartels vs. Miles City, 145 Mont 116 the Supreme Court held that at a Police Commission hearing any conflict between State law and City law must be resolved by following the State law. This is the general rule in all situations. The City law can explain or expand on State law but it cannot change the State law.

6. Statute of Limitations.

In the case of State ex. rel. O'Brien vs. Mayor of Butte, 54 Mont 533, the Supreme Court held that the charges against an officer are not barred by the Statute of Limitations. Criminal prosecution in the courts could be stopped because the time had run out on the bringing of the criminal charges but there is no time limit for a hearing before the Police Commission.

7. What is Officer Misconduct?

In State ex. **rel.** Wynne vs. Board 43 Mont 389, the Supreme Court defined misconduct in office in these words.

> "Any act involving moral turpitude, or any act which is contrary to justice, honesty, principle or good morals, if performed by virtue of office or authority of office is certainly included therein."

The final Written Decision.

Sections 7-32-4155 and 7-32-4160 require the Police Commission to make a written final decision after they have held a hearing on charges filed against a police officer. Those sections require the Police Commission to make "findings." In law this means that the written decision must contain a recitation of the "facts" which the Police Commission believes to be the "true facts" in relation to the charge. These findings are very important, for on appeal or review those facts will be examined to see if under the law they support the final decision.

In addition to the findings other matters are important and should be contained in a written final decision. The written decision should contain 4 main parts, they are:

1. The jurisdictional part:

The written decision should start out with a statement to the effect that the charges were filed, a time and place for the hearing was set, service was had on the accused officer, and the fact of the hearing or whatever the facts are. In other words this is a statement as to the why and how of the making of this final order.

2. The findings of fact.

Under this heading in the final decision the true facts as they are determined by the Police Commission should be set forth.

3. The conclusions of law.

Under this heading the conclusion reached by the Police Commission from an examination of the true facts should be set down. There are four possibilities:

(1) The Charges are unfounded, i,e. a statement or conclusion to the effect that the charges are either false or not supported by the true facts.

(2) The Charges are not sustained. i. e. a statement or conclusion to the effect that there is insufficient evidence or such conflicting evidence that the Police Commission cannot determine whether the charges were true or not.

(3) The acts occurred but the Officer was justified in his conduct and is exonerated, i. e. a statement or conclusion to the effect that the acts or conduct on the part of the officer were in fact committed but that they were properly performed under the circumstances and with lawful justification.

(4) The Charges are sustained, i. e. a statement or conclusion to the effect that the acts or conduct on the part of the officer were committed without any lawful justification. This conclusion should further state whether the acts were a violation of some specific section of the Criminal Code or some form of misconduct on the part of the officer.

4. The Judgment or Decision.

Under this heading the wording should be something like this:

It is the judgment (or decision) of the Police Commission that officer _____ is (Guilty or Not Guilty) of the charges filed against him.

It is further the judgment (or decision) of the Police Commission that (if the final decision is not guilty the wording would be "the action is dismissed.") (if the final decision is guilty then the wording would be something regarding the punishment)

The punishment authorised by section 7-32-4160 would be one of the following:

(1) Reprimand. Spell out how it is to be done.

(2) Suspension. With or without pay and spell out the time.

(3) Dismissal.

The final part of the written decision should refer the decision to the Mayor for his review and for him to carry out the order.

When the Order has been dated and signed by the members of the Police Commission it must be filed with the City Clerk as required by section 7-32-4160. The time for any appeal by the accused officer starts running when the order is filed with the city clerk. A copy of the order should be

given to the officer involved, the Mayor, and a copy should also be given to the complaining party.

The Mayor has five days after the order is filed to veto or modify the final decision. If the Police Commission finds the officer not guilty the Mayor does not have the right to change that decision. The Mayor does have the right to reduce the seriousness of the guilty decision or reduce the punishment imposed. The Mayor does not have the right to increase the punishment. The Mayor should make his change order in writing and should state his reasons.

Section 7-32-4161 makes it the duty of the Mayor to enforce the final decision of the Police Commission as modified if such was done.

General.

In conducting a hearing after charges have been filed it is essential that the Police Commission understand the elements of criminal offenses and have an understanding of a few basic rules of evidence. Rather than include that material in this manual the members of the Police Commission are referred to the "Handbook for Montana Peace Officers" which should contain most of the needed material and which is available in almost every police station.

PART VI

FORMS FOR USE BY POLICE COMMISSION

Certificate of Qualification of Applicants. . Page 34

Notice to any person who wishes to make a complaint charging misconduct on the part of a police officer . . . . . Page 35

Complaint against a Peace Officer . . . . . Page 36

Notice of hearing . . . . . Page 37

Certificate of Service . . . . . Page 38

Application for subpoena . . . . . Page 39

Subpoena . . . . . Page 40

Subpoena Duces Tecum . . . . . Page 41

BEFORE THE POLICE COMMISSION, CITY OF _____

- - - - - - - - - - - - - -

IN THE MATTER OF THE EXAMINATION OF

APPLICANTS FOR THE POLICE FORCE.

- - - - - - - - - - - - - -

TO: THE MAYOR OF THE ABOVE NAMED CITY.

At your request and pursuant to section 7-32-4154 we have examined the applicants for the City Police Force whose names were submitted to us by you. We find the following applicants qualified and certify that each has passed the examination as required by section 7-32-4108. We further certify that the applicants meet the residency requirements of section 7-32-301 and meet the standards promulgated by the Board of Crime Control pursuant to section 7-32-304.

_____

_____

_____

_____

_____

This certificate issued and effective this _____ day of _____, 19_____.

_____
Chairman, Police Commission

_____
Member,

_____
Member,

NOTICE. TO ANY PERSON WHO WISHES TO MAKE A COMPLAINT CHARGING MISCONDUCT ON THE PART OF A POLICE OFFICER:

Please read the following INSTRUCTIONS and proceed accordingly.

Where a complaint may be made.

A complaint may be made to;

1. The Chief of Police.
2. The Police Commission.
3. The County Attorney

Complaints to the Chief of Police.

Section 7-32-4105 of the Montana Codes makes it the duty of the Chief of Police to control all police officers. Section 7-32-4163 gives the Chief of Police power to discipline an officer by suspending that officer for a maximum of ten days without pay.

When a complaint is made to a Chief of Police he will investigate the matter and take whatever action he deems proper. He may find the matter more serious than he desires to handle and therefore he may refer it to the Police Commission.

Complaints to the Police Commission.

Section 7-32-4156 of the Montana Codes requires that every complaint presented to the Police Commission be in writing. A form is available for that purpose and will be provided upon request.

The Police Commission consists of three citizens who have been appointed by the Mayor and it is their duty to hear, try and decide all charges brought by any person against a member of the police department. They are not members of the Police Department but serve as the Judge and Jury when charges are made against a police officer.

If written charges are filed with the Police Commission that Commission may refer the charges to some investigating agency such as the County Attorney or the County Sheriff for preliminary investigation. If that preliminary investigation results in a finding of probable cause to believe the officer acted in an improper manner then the Police Commission will set a time and place for the hearing of the charges. The person making the complaint and the officer involved will each be notified and each will have the right to be present at the hearing with an attorney, if desired, and to give testimony and to call witnesses.

Complaints to the County Attorney

If the person making the complaint believes the police officer has committed a criminal offense the complaint may be made to the County Attorney. It will be entirely investigated and handled by that office.

Form for: COMPLAINT AGAINST A POLICE OFFICER.

I request that this complaint be referred to and handled by:

( ) The Chief of Police.
( ) The Police Commission.
( ) The County Attorney.

- -

Complaint.

Name of Officer: _____

Name and Address of Complainant: _____

_____

_____ Phone Number. _____

Time of Incident: _____

Place where occurred: _____

_____

Names and Address of Witnesses: _____

_____

(use reverse side if needed)

Statement of facts. (the basis for the charge) (use reverse side if needed)

I certify that the above information and statement of facts are true and correct.

Dated this _____ day of _____, 19____.

_____
Signature of complainant.

_____
Witness to signature.

BEFORE THE POLICE COMMISSION, CITY OF _____

- - - - - - - - - - - - - - -

IN THE MATTER OF THE CHARGES FILED)
) NOTICE
AGAINST _____)

- - - - - - - - - - - - - - -

To the above named Officer:

A complaint alleging misconduct has been filed against you, a copy is attached to this notice.

A hearing before the Police Commission is set for _____, the _____ day of _____, 19___, at the hour of _____M, The hearing will be held in _____.

WRITTEN RESPONSE REQUIRED. You are hereby notified that at least five days before the above hearing date you must file a written response to the allegations contained in the attached complaint. You can file the response either with your Chief of Police or the Police Commission.

YOUR RIGHTS. Section 7-32-4157 of the Montana Code gives you the right to be represented at the hearing by an attorney of your choice as well as the right to appear and bring witnesses to testify on your behalf.

If the charges are proven true to the satisfaction of the Police Commission you may receive a reprimand, be suspended or dismissed from your position on the Police force.

Dated this ___ day of _____, 19____.

_____
Chairman, Police Commission

BEFORE THE POLICE COMMISSION, CITY OF _____

- - - - - - - - - - - - - -

IN THE MATTER OF THE CHARGES FILED)
)
AGAINST _____)

- - - - - - - - - - - - - -

Certificate of Service

- - - - - - - - - - - - - -

I hereby certify that I served the above named Police Officer with the attached NOTICE and that at the same time I delivered to him a copy of the attached NOTICE as well as a copy of the COMPLAINT filed against him in this matter.

Service was made at _____ at the hour of _____M, on the _____ day of _____, 19_____.

Dated this ____ day of _____, 19___.

_____

BEFORE THE POLICE COMMISSION, CITY OF _____.

- - - - - - - - - - - - - -

IN THE MATTER OF THE CHARGES FILED

AGAINST _____

- - - - - - - - - - - - -

APPLICATION FOR SUBPOENA

- - - - - - - - - - - - -

Comes now _____

on behalf of _____ and requests the Police Commission to issue a subpoena directing _____

_____

to appear at the hearing before the Police Commission on _____ the _____ day of _____, 19__ at _____M. The following items are also needed from _____:

_____

_____

The reason for this request and application is: _____

_____

_____

_____

_____

Dated this ___ day of _____, 19____.

_____

(Signature)

BEFORE THE POLICE COMMISSION, CITY OF _____

- - - - - - - - - - - - - -

IN THE MATTER OF THE CHARGES FILED

AGAINST _____

- - - - - - - - - - - - - -

S U B P O E N A

- - - - - - - - - - - - - -

TO: _____

You are hereby commanded to appear before the above named Police Commission at _____ (place) in the City of _____, Montana, on the _____ day of _____, 19___ at _____M, to testify in the above entitled matter. Your failure to obey this Subpoena will be punished in the same manner as a contempt of the District Court.

Dated this _____ day of _____, 19___.

_____
Police Commission Chairman

Return of Service:

I certify that I served this Subpoena on the party to whom it was addressed and left that person a copy on the _____ day of _____, 19____.

_____

BEFORE THE POLICE COMMISSION, CITY OF _____

- - - - - - - - - - - - - - -

IN THE MATTER OF THE CHARGES FILED

AGAINST _____

- - - - - - - - - - - - - - - -

SUBPOENA DUCES TECUM

- - - - - - - - - - - - - - - -

To: _____

You are hereby commanded to appear before the above named Police Commission at _____ (place) in the City of _____, Montana, on the _____ day of _____, 19____ at _____m, to testify in the above entitled matter. Your failure to obey this Subpoena will be punished in the same manner as a contempt of the District Court. You are further commanded to bring with you the following items: _____

_____

_____

Dated this _____ day of _____, 19____.

_____
Chairman, Police Commission

Return of Service

I certify that I served this Subpoena Duces Tecum on the party to whom it is addressed and left that person a copy on the _____ day of _____, 19___.

_____

PART VII

STATUTES

THE POLICE COMMISSION

7-32-4151. Police Commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission."

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made, a new member may not sit on the commission for such business.

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed $10.00 per day or more than $50. per month for any month for each member in cities of the first and second class.

7-32-4153. Meaning of word mayor. Whever the word "mayor" is used in 7-32-4109 and 7-32-4155 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral and physical qualifications and their ability to fill the office as a member of the police force. It shall be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part of the laws of the state.

PART VII

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7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompentent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

7-32-4156. Charges to be in writing. Any charge brought against any member of the police force must be in writing in the form required by the police commission, and a copy thereof must be served upon the accused officer or member at least 15 days before the time fixed for the hearing of such charge.

7-32-4157. Rights of accused policeman. The accused shall have the right to be present at the trial in person and by counsel and to be heard and to give and furnish evidence in his defense.

7-32-4158. Police commission trials open to public. All trials shall be open to the public.

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

7-32-4160. Decision by police commission - veto power of mayor. (1) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him.

(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proved, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

7-32-4161. Enforcement of decision. When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board or the decision as modified if modified by the mayor. Such decision or order shall be subject to review by the district court of the proper county on all questions of fact and all questions of law.

7-32-4162. Hearing required prior to dismissal of policeman. In no case shall any officer or member of the police force be discharged without a hearing or trial before the police commission as provided in 7-32-4155 in all cities of the first class, all cities of the second class, any and all cities having a duly and regularly appointed, qualified, and acting police commission, and all cites and municipalities functioning under the commission form, city manager plan, or a mayor.

7-32-4163. Temporary suspensions. The mayor, or chief of police, subject to the approval of the mayor, shall have the p ɔr in all cases to suspend a policeman or any officer for a period of not exceeding 10 days in any one month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission.

7-32-4164. District Court review. The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of 60 days after the decision of the police commission or order of the mayor has been filed with the city clerk.

QUALIFICATIONS OF LAW ENFORCEMENT OFFICERS

7-32-301. Residency requirements. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who shall not have resided continuously in this state for a period of at least 1 year and in the county where such appointment is made for a period of at least 6 months prior to the date of said appointment.

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or policemen may in its discretion waive residency requirements.

7-32-303. Employment standards of board of crime control. No sheriff of a county, mayor of a city, other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who does not meet the minimum qualifying standards for employment promulgated by the board of crime control.

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

7-32-4101. Police department authorized and required. There shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part.

7-32-4102. Applicability of part. (1) This part shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3 and amendments thereto.

(2) Where the provisions of this part do conflict with the provisions of said part 42 and the amendments thereto pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

7-32-4103. Supervision of police department. In all cities and towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall have charge of and supervision over the police departmnt thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this part, he shall have the power to suspend or remove any member or officer of the force. He shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

7-32-4104. Additional regulations by city council. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this part or any law of the state, for the government of the police department and for regulating the powers and duties of its officers and members.

7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to him by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

(d) to perform such other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

7-32-4106. List of active and eligible policemen. (1) The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one an active list, who are to be actually employed and receive pay while so employed; and

(b) one an eligible list, who shall not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy in the order of their appointment.

(3) Such action of the council shall not be subject to review by any court.

(4) In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number 20% of the active list.

7-32-4107. Utilization of police reserves. Policemen or officers on the retired list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules as the board of police commissioners or city council shall prescribe.

7-32-4108. Appointment to police force. All appointments to the police force must be appointed by the mayor, or the manager in those cities operating under the commission-manager plan, and confirmed by the city council or commission. No such appointment must be made until:

(1) an application for such position on the police force has been filed with the mayor, or the manager in those cities operating under the commission-manager plan, and referred by him to the police commission, where such commission exists; and

(2) such applicant has successfully passed the examination required to be held by such police commission and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor, or the manager in those cities operating under the commission-manager plan.

7-32-4109. Temporary employment for persons doing police work. The mayor of any city shall have the power and authority, at any time when he deems it expedient, to employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department.

7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which he is applying for reinstatement may make application within 1 year from the date on which his name was removed from the active list of police officers to the police commission of that city or town wherein he last served, and his application must be considered by said police commission within 30 days after receipt of said application.

(2) Said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force; and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement. It shall be the duty of the mayor to submit to the city council of said city at its next regular meeting the recommendation of the police commission; and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town.

7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications shall have been referred to the police commission shall be required to successfully undergo an examination before the police commission and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

(2) Any applicant who shall make any false statement to the police commission as to his age or other required qualifications at his examination before the police commission shall be subject to suspension or dismissal from the police force after trial.

7-32-4112. Qualifications of policemen. (1) (a) The members of a police department of any city at the time of their appointment under this part shall not be less than 20 years of age or more than 40 years of age.

(2) The members of the police department on the active list of any city at the time of their appointment under this part shall not be less than 18 years of age or more than 35 years of age, but this restriction shall not apply to any member of any present police department, to police reserves provided for in this part, or to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service be not less than 3 months.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control.

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

7-32-4114. Restrictions on activities of policemen. (1) No member of the police force shall hold any other office or be employed in any other department of the city or town government.

(2) No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at such convention except in the performance of duty relating to his position as such officer or member.

(3) It shall be unlawful for any officer or member of the police department to solicit any person to vote at any political caucus, primary, or election for any candidate or to challenge any voter or in any manner to attempt to influence any voter at any political caucus, primary, or election or be a member of any political committee.

7-32-4115. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

7-32-4116. Minimum wage of police in first and second class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section shall apply to and include all cities and towns not of the first class which have heretofore elected or may hereafter elect to come under the provisions of (11-1817 to 11-1830 inclusive (now 7-32-4112 etc. and 19-10-301 etc.)

7-32-4117. Group insurance for policemen - funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective policemen;

(b) notwithstanding Title 2, chapter 18, part 7, pay the full premium of each policeman's insurance coverage for the policeman and his dependents.

(2) In compliance with 1-2-112, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city or town.

7-32-4118 Days off duty without loss of compensation. Each member of the police force in every city of the first and second class shall be given 2 days off duty in each 7 day period without loss of compensation.

7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under 39-3-405.

7-32-4120. Expenditure of state payments by municipality not having police retirement system - annual report. (1) Any city or town not governed by the provisions of the police retirement system law shall only expend the payment received pursuant to 19-10-305 for police training or to purchase pensions for members of its police department.

(2) The city treasurer or town clerk of such cities or towns shall on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-10-305.

7-32-4121. Action to recover salary. (1) Actions to recover salaries by members of the police departments of cities must be commenced within 6 months after the cause of action shall have accrued.

(2) No action for unpaid salary can be maintained by members of the police department of cities except for service actually rendered and, if suspended or placed on the eligible list, then only for the days the member of the police department reports for duty.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

7-32-4122 through 7-32-4130 reserved. (i. e. no section in code.)

7-32-4131. Compensation and allowance for sick or injured policemen. Whenever any member of a police department in any city or town shall, on account of sickness or disability suffered or sustained while a member of such police department and not caused or brought on by dissipation or abuse, be confined to any hospital or his home and shall require medical attention and care, the officer of such police department may be allowed, by the city council, his salary as such police officer during his absence and an amount equal to his expenses while confined for such injury or sickness.

7-32-4132. Continuation of salary of officer injured in performance of duty. A member of a municipal law enforcement agency of a first or second class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the full amount of his regular salary, less any amount he may receive from workers' compensation, until his disability has ceased or for a period not to exceed 1 year, whichever shall first occur.

7-32-4133. Determination of eligibility for continued salary. (1) The determination of whether an injury was incurred during or resulted from the performance of duty shall be made by the municipality. The injured officer may appeal the decision to the municipal law enforcement board available to him.

(2) The determination of whether the injury resulted in a disability shall be made by the municipality, with the advice of medical opinion. The injured officer may appeal the decision to the municipal law enforcement board available to him.

7-32-4134. Periodic medical examinations - waiver of right to salary. (1) The municipality may appoint a physician to examine the officer from time to time. If the injured officer has recovered and is physically able to perform light duty or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit medical examination as authorized by subsection (1) waives his right under 7-32-4132 to receive his regular salary during his absence from service.

7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a regular salary under 7-32-4132 shall be discontinued if the officer is disabled for an undertermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 10. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his regular salary under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

DISABILITY RETIREMENT

19-10-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of Police Commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall be placed on the retired list of the city or town.